

quash a subpoena, citing the requirements of § 40.13 ). This part does not require you to disobey a court order, however.

(g) Notwithstanding any other provision of this Part, as an employer of Commercial Motor Vehicle (CMV) drivers holding commercial driving licenses (CDLs) or as a third party administrator for owner-operator CMV drivers with CDLs, you are authorized to comply with State laws requiring you to provide to State CDL licensing authorities information about all violations of DOT drug and alcohol testing rules (including positive tests and refusals) by any CMV driver holding a CDL.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 33737, June 13, 2008]

#### **§ 40.333 What records must employers keep?**

(a) As an employer, you must keep the following records for the following periods of time:

(1) You must keep the following records for five years:

(i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;

(ii) Records of verified positive drug test results;

(iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);

(iv) SAP reports; and

(v) All follow-up tests and schedules for follow-up tests.

(2) You must keep records for three years of information obtained from previous employers under § 40.25 concerning drug and alcohol test results of employees.

(3) You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.

(4) You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

(b) You do not have to keep records related to a program requirement that does not apply to you (*e.g.*, a maritime employer who does not have a DOT-mandated random alcohol testing pro-

gram need not maintain random alcohol testing records).

(c) You must maintain the records in a location with controlled access.

(d) A service agent may maintain these records for you. However, you must ensure that you can produce these records at your principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must ensure that you can provide them within two business days.

(e) If you store records electronically, where permitted by this part, you must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

### **Subpart Q—Roles and Responsibilities of Service Agents**

#### **§ 40.341 Must service agents comply with DOT drug and alcohol testing requirements?**

(a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.

(b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

#### **§ 40.343 What tasks may a service agent perform for an employer?**

As a service agent, you may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.